

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JACOB EARL MURPHY,

§

Plaintiff,

CIVIL ACTION NO. 5:20-CV-00106-RWS

v.

STATE OF TEXAS BOARD OF
PARDONS AND PAROLES,

§

Defendant.

§

ORDER

Plaintiff Jacob Murphy, proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge.

Plaintiff complains he received notice in June of 2020 stating he had been denied parole for the third time in four years. He asserts a parole review hearing was held in his absence, which resulted in the denial of his liberty until June of 2022. In a motion for summary judgment, Plaintiff complained the Board failed to appear at a hearing in the present lawsuit prior to the referral of the case to the Magistrate Judge.

After review of the pleadings, the Magistrate Judge issued a Report recommending the lawsuit be dismissed without prejudice for failure to state a claim upon which relief may be granted. Docket No. 7. The Magistrate Judge also recommended denial of Plaintiff's motion for summary judgment. The Magistrate Judge observed Plaintiff lacks a liberty interest in release on parole and can only seek release from prison through habeas corpus, not a civil rights lawsuit. Although

Plaintiff complained that the Board did not appear at a hearing, no hearings have been held in this case.

A copy of this Report was sent to Plaintiff at his last known address on January 28, 2021, but no objections have been received. The Fifth Circuit has explained that where a letter is properly placed in the United States mail, a presumption exists that the letter reached its destination in the usual time and was actually received by the person to whom it was addressed. *Faciane v. Sun Life Assurance Company of Canada*, 931 F.3d 412, 420-21 and n.9 (5th Cir. 2019). Because no objections have been received, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

Nonetheless, the Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 7) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for summary judgment (Docket No. 3) is **DENIED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. This dismissal shall not prevent

Plaintiff from challenging the decisions of the Parole Board through any lawful means, including but not limited to state habeas corpus procedures. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED-AS-MOOT.**

So ORDERED and SIGNED this 5th day of March, 2021.

Robert W. Schroeder, Jr.
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE